



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

September 21, 1993

Mr. Norbert J. Hart  
Assistant City Attorney  
City of Corpus Christi  
P.O. Box 9277  
Corpus Christi, Texas 78469-9277

OR93-571

Dear Mr. Hart:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552.<sup>1</sup> Your request was assigned ID# 18391.

The City of Corpus Christi (the "city") has received a request for information relating to a radio communications contract to which the city is a party. Specifically, the requestor seeks four categories of information:

- 1) Criminal investigation of double billing and other possible illegal activities involving Dailey Wells Communications.
- 2) A copy of computer range verification printout on the 800 MHZ radio purchased from General Electric for the City of Corpus Christi.
- 3) A complete list, names and addresses, of everyone who gave statements to Internal Affairs or organized crime. Ref: The Dailey Wells Communications investigation.
- 4) A copy of the contract between the City of Corpus Christi and Ericsson GE Mobile Communications Inc. for purchase and installation of 800 MHZ radio.

You advise us that you have released information requested in items 2 and 4 above. You have provided us with four exhibits A through D, portions of which you advise have been

---

<sup>1</sup>We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

made available to the requestor.<sup>2</sup> You claim that portions of exhibits B and D and exhibits A and C in their entirety are excepted from required public disclosure by sections 552.101, 552.102, 552.103(a), 552.108, and 552.111 of the act.

Section 552.101 of the act excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." You claim that exhibits B and D contain information provided by informants concerning allegations of bribery in connection with the operation of city-owned communication equipment. You claim that pages B-1 to B-18, B-52 to B-59, and page D-9 are excepted from required public disclosure by section 552.101 in conjunction with the informer's privilege. The informer's privilege has been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex.Crim.App. 1969). In *Roviaro v. United States*, 353 U.S. 53, 59 (1957), the United States Supreme Court explained the rationale that underlies the informer's privilege:

What is usually referred to as the informer's privilege is in reality the Government's privilege to withhold from disclosure the identity of persons who furnish information of violations of law to officers charged with enforcement of that law [citations omitted]. The purpose of the privilege is the furtherance and protection of the public interest in effective law enforcement. The privilege recognizes the obligation of *citizens* to communicate their knowledge of the commission of crimes to law enforcement officials and, by preserving their anonymity, encourages them to perform that obligation. (Emphasis added.)

The informer's privilege aspect of section 552.101 protects the identity of persons who report violations of the law. Open Records Decision No. 434 (1986). When information does not describe conduct that violates the law, the informer's privilege does not apply. Open Records Decision No. 515 (1988); 191 (1978). Although the privilege ordinarily applies to the efforts of law enforcement agencies, it can apply to administrative officials with a duty of enforcing particular laws. Attorney General Opinion MW-575 (1982); Open Records Decision Nos. 285, 279 (1981). The privilege does not apply ordinarily to employees "reporting" to their employers about the job performance of other employees. *See* Open Records Decision No. 515.

We have examined the information for which you seek informer's privilege protection. Generally, it consists of witness statements taken during interviews conducted by investigating officers or documents related to these statements. Each of the witnesses are city employees and have worked with the suspect in connection with the maintenance of the communication equipment. Their statements were taken in response to questions posed by the investigator and include discussions of their job duties and the

---

<sup>2</sup>Pages B-19 through B-51 and pages B-60 through B-95 of Exhibit B have been made available to the requestor.

job duties of others working with them. Although some of the statements include allegations of wrongdoing, such allegations appear to relate to deficiencies in job performance and do not communicate specific violations of the law. We conclude, therefore, that these statements and the other documents for which you seek informer's privilege protection may not be withheld from required public disclosure under section 552.101 of the act in conjunction with the informer's privilege.<sup>3</sup>

You also claim that exhibits A and C and pages B-1 through B-18 of exhibit B are excepted from required public disclosure by section 552.108 of the act. Section 552.108 excepts:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Traditionally, our office has distinguished between cases that are still under active investigation and closed cases when applying section 552.108. In cases that are still under active investigation, section 552.108 excepts from disclosure all information except that generally found on the first page of the offense report. See *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). However, in closed cases the governmental body must demonstrate that release of the information would unduly interfere with law enforcement or prosecution before it can withhold the information under section 552.108. Open Records Decision No. 216 (1978) at 4; see also Open Records Decision Nos. 434 (1986); 397 (1983).

You advise us that exhibits A and C relate to a pending criminal investigation. Accordingly, we conclude that exhibits A and C, with the exception of information specifically made public in *Houston Chronicle* and Open Records Decision No. 127, may be withheld in their entirety from required public disclosure under section 552.108 of the Open Records Act.<sup>4</sup> However, you advise us that the documents contained in Exhibit B relate to a closed investigation. Because you have not explained how release of the witness statements in Exhibit B would unduly interfere with law enforcement or prosecution, and because the documents do not provide such an explanation on their face, we have no basis to conclude that any of the information in Exhibit B may be withheld from required public disclosure under section 552.108 of the act.

---

<sup>3</sup>You also claim that portions of Exhibit B are excepted from required public disclosure by section 552.101 of the act in conjunction with "false light" privacy interests. "False light" privacy, however, is no longer a proper consideration under section 552.101 of the act. Open Records Decision No. 579.

<sup>4</sup>Because we conclude that exhibits A and C may be withheld under section 552.108, we do not reach whether exhibits A and C are excepted from required public disclosure by section 552.103(a) of the act or by section 552.101 in conjunction with section 143.089(g) of the Local Government Code.

Finally, you claim that pages B-18 and B-52 through B-59 of Exhibit B and Exhibit D constitute "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency" under section 3(a)(11) of the act and, therefore, are excepted from public disclosure. In Open Records Decision No. 615 (1993) (copy enclosed), this office reexamined the section 3(a)(11) exception and held that section 3(a)(11) excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body at issue. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. *Id.* at 5-6. In addition, factual information that may be severed from information containing advice and opinions is not protected by section 3(a)(11). *Id.* The information for which you seek section 3(a)(11) protection does not constitute internal communications consisting of advice, recommendations, opinions, and other material reflecting the city's policymaking processes. Indeed, most of the information is purely factual in nature or relates to internal administrative or personnel matters. The requested information, except as noted above, must therefore be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Opinion Committee

LRD/GCK/jmn

Enclosure: Open Records Decision No. 615  
Submitted documents

Ref.: ID# 18391

cc: Mr. Eric A. Wramp  
President  
Corpus Christi Police Officers' Association  
3122 Leopard Street  
Corpus Christi, Texas 78408  
(w/o enclosures)